

Paper 10

Filed by:

Trial Merits Panel  
Administrative Patent Judge  
Mail Stop Interference  
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Filed August 16, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

DAVID B. MELVIN  
Junior Party  
(Patent Nos. 6,190,408 and 6,409,760),

v.

CYRIL J. SCHWEICH, JR. and TODD J. MORTIER  
Senior Party  
(Application No 10/073,968).

Patent Interference No. 105,452 (MPT)  
(Technology Center 3700)

JUDGMENT - REQUEST FOR ADVERSE - Bd. R. 127(b)

Before: MEDLEY, TIERNEY and NAGUMO, *Administrative Patent Judges*

TIERNEY, *Administrative Patent Judge*.

This interference was declared on July 10, 2006. Per the Standing Order (Paper No. 2), within fourteen days of the declaration of the interference, each party in interference must file certain mandatory notices (notice of real party in interest, related proceedings) as well as a notification of lead and backup counsel. (Paper No. 2, ¶¶ 8 & 108). Junior Party Melvin failed to file the required papers.

1       The official USPTO address for the involved Melvin '408 and '760 patents lists Dr.  
2       David B. Melvin as the contact person for the patent. Earlier today, a trial division paralegal,  
3       Yolunda Townes, contacted David B. Melvin, regarding the filing of the required papers. Dr.  
4       Melvin informed Ms. Townes that Junior Party Melvin would not proceed in this interference  
5       and was abandoning the contest. A request for abandonment of the contest under  
6       Bd.R. 127(b)(4) is construed as a request for adverse judgment. Bd.R. 127(b).

7       It is:

8       **ORDERED** that judgment on priority as to Count 1, the sole count in interference, is  
9       awarded against Junior Party Melvin.

10       **FURTHER ORDERED** that Junior Party Melvin is not entitled to a patent containing  
11       claims 1-39 of U.S. Patent No. 6,190,408, all of which correspond to Count 1.

12       **FURTHER ORDERED** that Junior Party Melvin is not entitled to a patent containing  
13       claims 1-50 of U.S. Patent No. 6,409,760, all of which correspond to Count 1.

14       **FURTHER ORDERED** that a copy of this paper shall be made of record in the files of  
15       application 10/073,968 and U.S. Patent No. 6,409,760 and U.S. Patent No. 6,190,408.

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**FURTHER ORDERED** that should there be a settlement agreement, the parties  
attention is directed to 35 U.S.C. §135(c) and Bd.R. 205.

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4                   /Sally C. Medley/ )  
5                   SALLY C. MEDLEY         )  
6                   ADMINISTRATIVE PATENT JUDGE )  
7                   ) )  
8                   ) )  
9                   /Michael P. Tierney/ ) BOARD OF PATENT  
10                  MICHAEL P. TIERNEY      ) APPEALS AND  
11                  ADMINISTRATIVE PATENT JUDGE ) INTERFERENCES  
12                  ) )  
13                  ) )  
14                  /Mark Nagumo/ )  
15                  MARK NAGUMO         )  
16                  ADMINISTRATIVE PATENT JUDGE )

21 cc (electronic filing):

**23      Counsel for MELVIN:**

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**31      Counsel for SCHWEICH:**

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**Townes, Yolunda**

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**From:** Townes, Yolunda on behalf of Interference Trial Section  
**Sent:** Wednesday, August 16, 2006 5:03 PM  
**To:** 'david.melvin@uc.edu'; 'les.bookoff@finnegan.com'; 'troy.grabow@finnegan.com'  
**Subject:** Interference #105452\_010 (MPT) - Judgment-Request for Adverse-Bd.R. 127(b)

Judgment - Request for Adverse - Bd.R. 127(b)

Yolunda R. Townes  
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